IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

RAIS AHMED KHAN VS. STATE OF RAJASTHAN
(S.B.C.Writ Petition No.1557/03)

Date of order :- 15th December,2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. P.R.Mehta, Advocate for the petitioner.
Mr. Rameshwar Dave, Dy.Government Advocate for the respondents.

This writ petition has been filed by the petitioner with the prayer that the respondent no. 1 may be directed to issue "Certificate of No Dues Enquiry" in his favour and further the respondent no. 2 be further directed to forward his pension case to the Pension Department soon upon receiving the said certificate from respondent no. 1 and respondent no. 5 be directed to finalise his pension case and release final pension and amount of gratuity and commutation with interest @ 12% from 30.8.2001 till the date of actual payment.

Factual matrix of the case is that the petitioner was serving the respondents on the post of Education Extension Officer. He was placed under suspension on 25.7.1992 in a disciplinary

matter relating to purchase of diesel pump set. When he was still under suspension, he attained the age of superannuation and eventually retired from service on 31.1.1993. The disciplinary enquiry was conducted against the petitioner under Rule 16 of the Rajasthan Civil Services(Classification, Control and Appeal) Rules, 1958 (for short "the Rules of 1958") and at the conclusion of enquiry, the respondents vide order dated 30.8.2001 awarded penalty of stoppage of 5% of pension amount under Rule 7 of the Rajasthan Civil Services(Pension) Rules, 1996(for short "the Rules of 1996"). Although after retirement, the petitioner was allowed provisional pension but inspite of the fact that final order was passed on 30.8.2001, no order of payment of his pensionary benefits, gratuity and commutation has been passed by the competent authority. According to Rule 89 of the Rules of 1996, if the enquiry is concluced, a government servant is entitled to receive his pensionary benefits within a period of 60 days from the date of passing of his final order thereupon and in case such payments are delayed, the concerned employee is entitled to interest @ 12% p.a. The respondent no. 2 namely District Education Officer(Secondary Education), Banswara requested the Director, Secondary Education, Bikaner to issue "No Dues Certificate" in regard to pendency of the enquiry against the petitioner and thereafter again reminded for the same by his letter dated 9.11.2001. When nothing was done, the

petitioner submitted a representation to the Secretary to the Chief Minister's office on 12.9.2002. The respondents too again wrote a letter to the Director (Secondary Education), Bikaner on 8.1.2003 for issuing "No Dues Certificate". Then the petitioner again submitted a representation to the government on 7.2.2003. The respondent thereafter again wrote a letter to the Assistant Director (C) Secondary Education, Bikaner on 25.2.2003 with a copy endorsed to the Director, Secondary Education, Bikaner and informed that pension case of the petitioner has been returned back by the Pension Department with the objection that "No Dues Certificate" was not enclosed with the pension set and in this respect already seven reminders have been sent to the Directorate of Secondary Education, Bikaner on 26.8.2002, 30.8.2002, 23.9.2002, 14.10.2002, 26.12.2002, 8.1.2002 and 1.2.2003. It has been submitted that as per Rule 89 of the Rules of 1996 if the retiral benefits are delayed by more than 60 days of passing of the final order in the disciplinary proceedings, the government servant is entitled to interest @ 12% p.a. In these circumstance the petitioner was constrained to file the present writ petition with the aforesaid prayers.

The respondents have contested the writ petition and filed a detailed reply in which it has been submitted that the pension

case of the petitioner could not be finalised immediately after his retirement due to the pendency of the disciplinary enquiry against him under Rule 16 of the Rules of 1958. Now when the enquiry has been concluded and a penalty of stoppage of 5% of his pension amount has been imposed vide order dated 30.8.2001, his pension case going to be settled soon. The writ petition is not maintainable because the petitioner has remedy before the Appellate Tribunal. Therefore, the writ petition is liable to the dismissed.

On merits, it has been submitted that 75% provisional pension of the petitioner was released immediately after his retirement and he was allowed 100% provisional pension by order dated 10.3.1997 w.e.f. 31.1.1993. There was thus no pecuniary loss caused to the petitioner. In so far as the amount of gratuity and computation is concerned, such claim could be settled only after the conclusion of the disciplinary enquiry. On the request by respondent no.2 for issue of "No Dues Certificate", it has been submitted that B.D.O, Panchayat Samiti, Sajjangarh had informed the District Education Officer(respondent no.2) that the work of 4 anicuts sanctioned during the period when the petitioner was posted as Block Development Officer in that Panchayat Samiti. This work was still lying incomplete inspite of the government having spent entire sanctioned amount. The issue was pending as per para 3.9 of the

C.A.G. Report 1993-94 and para 15 of the recommendations of the Panchayat Samiti. The delay was caused in issuing N.O.C. Because of this reason. Moreover, the office of D.E.O. was bifurcated into two wings in 2001-02 during this period namely, primary education and secondary education therefore also sometime was consumed in collecting the records and finally on referring the matter to the Pension Department, P.P.O and G.P.O. have been issued in favour of the petitioner on 26.4.2003. Non issuance of "No Due Certificate" in favour of the petitioner was not without any reason. It cannot therefore be said that the petitioner was deprived of his pensionary benefits due to any negligence on the part of the respondents. It has therefore been prayed that the writ petition be dismissed.

I have heard Mr. P.R. Mehta, learned counsel for the petitioner and Mr. Rameshwar Dave, Dy.Government for the State and perused the record.

The facts of this case would speak for themselves. While the petitioner was placed under suspension on 25.7.1992, he stood retired upon attaining the age of superannuation on 31.1.1993. The departmental proceedings against him remained pending and finally eight and half years thereafter he was awarded a penalty of stoppage of 5% amount of pension by order dated 30.8.2001. The

District Education Officer had been repeatedly requesting the Director of Secondary Education for issuing N.O.C. and during the period of 2003-04 he had written as many as seven letters for pressing his request but "No Dues Certificate" was not issued. Reference to the audit para could hardly afford any reason to the respondents to delay issuance of "No Due Certificate" particularly when the disciplinary proceedings stood concluded and petitioner was awarded penalty. The "No Dues Certificate" in any case was issued later on the basis of which some of the pensionary benefits of the petitioner were paid. It is not clear from the record whether entire retiral dues to the petitioner have been paid but it appears that G.P.O. has been issued and other benefits also might have been paid. Rule making authority has purposely engrafted Rule 89 of the Rules of 1996 to curb the menace of delay in finalisation of the pension case and payment of retiral dues of a retired government servants. Rule 89 for that purpose is worth reproduction hereunder:

> "89. Interest on delayed payment of retiral benefits:
> (1)Except in exceptional circumstances, if the payment of retiral benefits has been authorised after 60 days from the date when its payment became due, and it is clearly established that the delay in payment was not on account of failure on the part of the Government servant to comply with the procedure laid down in this Chapter or elsewhere in these rules, interest 12% per annum for the period beyond 60 days after retiral benefits become due would be payable till the end of the month preceeding the month in which the retiral benefits are authorised.

(2) Every case of delayed payment of retiral benefits shall, suo moto, be examined by the Head of Office and shall be forwarded to the Administrative Department through the Head of Department, and where the Administrative Department is satisfied that the delay in payment of retiral benefit was caused on account of administrative laps or inaction, the Administrative Department concerned shall issue sanction for the payment of interest to the Director, Pension Department.

(3)In all cases, where the payment of interest has been authorised, the Administrative Department concerned shall fix responsibility and take disciplinary action under the Rajasthan Civil Services (C.C.A.) Rules, 1958 against the Government servant(s) who is/are found responsible for the delay in the payment of retiral benefits and shall recover the loss caused to the Government due to payment of interest to the pensioner from the government servant(s) held responsible.

(4) In the order for payment of interest the Administrative Department shall also mention the name(s) of the officer(s) /official(s) responsible for the delay and the amount of interest recoverable from him/them.

(5)If, as a result of Government's decision taken subsequent to the retirement of a Government servant, the amount of retiral benefits already paid on his retirement is enhanced on account of -

(a) grant of emoluments higher than the emoluments on which retiral benefits, already paid, were determined or

(b) liberalisation in the provision of these rules from a date prior to the date of retirement of the Government servant concerned,

no interest on the arrears on retiral benefits shall be paid.

(6)In case any delay is caused in the Pension Department responsibility shall be fixed for such delay and suitable action take against such erring official(s) to recover the interest paid to the pensioner."

It would be evident from the above that if payment of

retiral benefits has not been authorised after 60 days from the date when its payment became due and if it is established that delay in making payment of such amount was not on account of failure on the part of the Government servant to comply with the procedure laid down in the said Rules, interest @ 12 % p.a. for the period beyond 60 days after retiral benefits become due would be payable till the end of the month preceeding the month in which the retiral benefits are authorised.

In the result, the writ petition is partly allowed. The respondents are directed to release all retiral dues of the petitioner if not already released within a period of two months from the date of service of copy of this judgment and are further directed to pay the petitioner interest @ 12% p.a for the period of delay till such payments are actually made. Payment of interest shall also be made within a period of two months from the date of service of copy of this judgment. In the facts of the case, the parties shall bear their own costs.

(MOHAMMAD RAFIQ),J.